

AMENDED IN ASSEMBLY MAY 12, 2003

AMENDED IN ASSEMBLY MAY 6, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 95**

**Introduced by Assembly Member Corbett**

January 8, 2003

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An act to add Sections 17204.7 and 17204.8 to the Business and Professions Code, relating to unfair competition.

### LEGISLATIVE COUNSEL'S DIGEST

AB 95, as amended, Corbett. Private actions.

Under existing law, unfair competition is defined to include an unlawful, unfair, or fraudulent business act or practice, unfair, deceptive, untrue, or misleading advertising, and any false representations to the public. Existing law authorizes an action for relief from unlawful competition to be brought by the Attorney General, a district attorney, a county counsel, or a city attorney, or by any person acting for the interests of itself, its members, or the general public, and provides various remedies, including injunctive relief, restitution, and civil penalties.

This bill would require a person bringing a private action under these provisions on behalf of the general public to serve a specified notice on each defendant in the action. The bill would also ~~specify disgorgement as an available remedy for acts of unfair competition and would~~ set forth principles for joining these actions. *The bill would specify that its provisions are not severable.* The bill would make its provisions

contingent upon SB 122 being enacted and becoming effective on or before January 1, 2004.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17204.7 is added to the Business and  
2 Professions Code, to read:

3 17204.7. (a) A person bringing a private action for relief on  
4 behalf of the general public pursuant to Section 17204 shall serve  
5 on each defendant at the time of service of a demand letter or a  
6 complaint, a notice containing the following statement in boldface  
7 type:

8 “IMPORTANT CONSUMER INFORMATION: You are  
9 receiving this notice because at least one of the claims against you  
10 alleges an unlawful, unfair, or fraudulent business act or practice  
11 under the California Business and Professions Code. YOU HAVE  
12 IMPORTANT LEGAL RIGHTS, and you may wish to consult a  
13 ~~lawyer~~ *an attorney* promptly to get helpful legal advice in  
14 responding to this notice.

15 In addition, you may wish to contact ~~either~~ your local District  
16 Attorney’s Office, the Attorney General’s Office, or the local bar  
17 association in your county, or all of these offices, for legal  
18 information about this type of lawsuit.

19 It also is important that you know that you are not required to  
20 pay any money at this time. Moreover, RECEIPT OF THIS  
21 NOTICE DOES NOT NECESSARILY MEAN YOU WILL BE  
22 FOUND LIABLE FOR ANYTHING. Your best protection is to  
23 seek out legal advice before agreeing to anything.

24 Once you have an attorney representing you, the attorney for the  
25 plaintiff in this case is prohibited from contacting you unless your  
26 attorney is present or your attorney has given the plaintiff’s  
27 attorney permission to contact you. If the plaintiff’s attorney does  
28 try to contact you personally, you should immediately report the  
29 contact to your attorney. Attorneys are not allowed to threaten to  
30 report you to a law enforcement or regulatory agency if you refuse  
31 to settle a claim. If the plaintiff’s attorney does so, you should  
32 notify your attorney or the State Bar of California immediately.



1 If you choose not to hire an attorney, you may obtain additional  
2 information about how to represent yourself on the California  
3 Courts Web site, [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

4 If you agree to pay any attorney's fees to the plaintiff in this case,  
5 a court must review these fees, pursuant to subdivision (a) of  
6 Section 17204.6 of the California Business and Professions  
7 Code."

8 (b) The notice in subdivision (a) shall be in at least 14-point  
9 boldface type and shall not contain any other statements except for  
10 those required in subdivision (a).

11 (c) An attorney who fails to comply with this section may be  
12 subject to disciplinary action by the State Bar of California.

13 SEC. 2. Section 17204.8 is added to the Business and  
14 Professions Code, to read:

15 ~~17204.8. (a) Disgorgement relief is an available remedy~~  
16 ~~under Section 17203. A court shall assure that any disgorgement~~  
17 ~~relief in excess of any restitution paid by a defendant shall be~~  
18 ~~distributed as a fluid recovery or cy pres award, to the extent~~  
19 ~~possible, in a manner designed either to further the purposes of the~~  
20 ~~underlying causes of action or to promote justice for all~~  
21 ~~Californians.~~

22 ~~(b) (1)~~

23 17204.8. (a) All persons may be joined in one action as  
24 defendants if there is asserted against them:

25 ~~(A)~~

26 (1) Any right to relief jointly, severally, or in the alternative, in  
27 respect of or arising out of the same transaction, occurrence, or  
28 series of transactions or occurrences and if any question of law or  
29 fact common to all these persons will arise in the action; or

30 ~~(B)~~

31 (2) A claim, right, or interest adverse to them in the property or  
32 controversy which is the subject of the action.

33 ~~(2)~~

34 (b) It is not necessary that each defendant be interested as to  
35 every cause of action or as to all relief prayed for. Judgment may  
36 be given against one or more defendants according to their  
37 respective liabilities.

38 ~~(3)~~

39 (c) Where the plaintiff is in doubt as to the person from whom  
40 he or she is entitled to redress, he or she may join two or more

1 defendants, with the intent that the question as to which, if any, of  
2 the defendants is liable, and to what extent, may be determined  
3 between the parties.

4 ~~(4)~~

5 *(d) The fact that individual defendants who are not associates*  
6 *or affiliates of each other* are engaged in the same or similar  
7 businesses and are alleged to have violated the same or similar  
8 laws or regulations shall not, in itself, constitute a basis for joinder  
9 under this chapter.

10 SEC. 3. The provisions of ~~paragraph (4) of subdivision (b)~~  
11 *subdivision (d)* of Section 17204.8 of the Business and Professions  
12 Code *added by this act do not constitute a change in, but* are  
13 declaratory of, existing law.

14 SEC. 4. *The provisions of this act are not severable. If any*  
15 *provision of this act or its application is held invalid, all of the*  
16 *other provisions of this act and all of their applications shall be*  
17 *invalid.*

18 SEC. 5. This act shall become ~~effective~~ *operative* only if  
19 Senate Bill No. 122 of the 2003–04 Regular Session is enacted and  
20 becomes effective on or before January 1, 2004.

